93-1255

Supreme Court, U.S.
FILED
FEB 25 1994
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IN THE
SUPREME COURT OF THE UNITED
STATES OF AMERICA

OCTOBER TERM, 1993

COUNTY OF MORRIS,

Petitioner,

v.

JEAN PIERRE PHILIPPEN,

Respondent.

MEMORANDUM OPPOSING CERTIORARI

Respondent, the New Jersey Office of the Public Defender, represents to the court as follows:

1. In the New Jersey courts this case was a dispute between the Morris County government and the state Office of the Public Defender over which of them must pay for transcripts for an indigent defendant appealing a municipal court conviction. The issue presented required the reviewing courts -- the New Jersey Superior Court, Appellate Division and the New Jersey Supreme Court -- to apply the Public Defender Act, N.J.S.A. 2A:158A-1 *et seq.*, and Supreme Court cases construing it. Petitioner, the County of Morris, lost the dispute over statutory construction and now seeks to carry it to this Court. Because Morris County fails to state any genuine federal claim, the petition for writ of *certiorari* must be denied.

2. In Point I petitioner takes issue with New Jersey court decisions holding that the Public Defender has no obligation to provide any services to municipal defendants because of the legislature's failure to fund the portion of the Public Defender Act that purports to impose that obligation, N.J.S.A. 2A:158A-5.2. The petition contends that these decisions violate the New Jersey Constitution (Pet. 26-36) and that New Jersey courts' failure to "follow" "written law" constitutes a denial of the right to due process of law under the federal constitution (Pet. 36, 38-39). Petitioner cites to no case, and respondent has found none, holding that the Due Process clause of the Fourteenth Amendment protects governmental agencies against actions by other governmental agencies; this Court has specifically held that the states are not "persons" within the meaning of the Due Process clause of the Fifth Amendment. South Carolina v. Katzenbach, 383 U.S. 310, 323-24

(1966). Petitioner has failed to state a valid federal claim in Point I.

3. In addition, as petitioner has recast the claim in seeking this Court's review, it appears that the State of New Jersey should be named as a respondent.

4. In Point II petitioner does not even attempt to state a federal claim. It argues simply that its interpretation of the Public Defender Act should override a New Jersey court rule (Pet. 40-42).

Because the case involves no plausible basis for this Court's review, let alone any matter of national importance, the petition for writ of *certiorari* should be denied.

Respectfully submitted,

CLAUDIA VAN WYK
Counsel for Respondent
Office of the Public Defender
31 Clinton Street
9th Floor
P.O. Box 46003
Newark, New Jersey 07101
(201) 877-1200

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